

## Fair Political Practices Commission

### Memorandum

**To:** Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh & Remy

**From:** Emelyn Rodriguez, Commission Counsel, Legal Division  
John W. Wallace, Assistant General Counsel  
Scott Hallabrin, General Counsel

**Subject:** Prenotice Discussion of Proposed Amendments to Regulation 18530.4 – Relating to Legal Defense Funds

**Date:** August 24, 2007

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Proposed Commission Action and Staff Recommendation: Approve publication of notice for amendment of Regulation 18530.4 at the November meeting.

Reason for Proposal: Under current law, state candidates and officeholders may establish a legal defense fund under Government Code Section 85304 to defray attorney's fees and other legal costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officeholder's governmental activities and duties. Contributions raised for a legal defense fund are not subject to contribution limits or the voluntary expenditure ceiling.

The proposed amendments clarify the Commission's legal defense funds regulations regarding the establishment, use, and termination of legal defense fund accounts. Proposed language also specifies recordkeeping and auditing rules applicable to legal defense committees.

The following is a summary of proposed amendments:

1. Establishing the Legal Defense Account and Controlled Committee. The regulation currently requires candidates and officers who raise legal defense funds to deposit the funds in a bank account separate from their campaign account and establish a controlled committee by filing a statement of organization (Form 410) under Government Code Section 84101. The proposed amendments require the controlled committee's statement of organization to contain a description of the specific legal dispute or disputes for which the account is established, amendment of the statement of organization as legal disputes are either resolved or initiated, and inclusion of the candidate's or elected state officer's last name in the committee name. The new requirements allow staff and the public to determine whether a candidate or officer has created a legal defense account for a proper purpose, and to determine the identity of the candidate or officer creating the account.

2. Required Recordkeeping and Audits. Language in new subdivision (c) provides that a candidate, treasurer, and officer are subject to recordkeeping requirements under Government Code Section 84104. The proposed amendments require that any mandatory audit of a candidate or officer conducted under the Act include that candidate's or officer's legal defense committee

if maintained during the same audit period. The filer is also required to keep separate detailed accounts, records, bills, and receipts, for each legal dispute.

3. Filing Schedule. Regulation 18530.4(b) currently requires a legal defense committee to file quarterly campaign statements. New subdivision (d) revises the filing requirements for candidates and officers who must file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it would be required to do for any other controlled committee formed by the candidate or officer .

4. Limitations on Use of Legal Defense Funds. New subdivision (g) defines the circumstances under which legal defense funds may be raised by requiring that the amount raised be no more than reasonably calculated to pay for “attorney’s fees and other related legal costs” (subdivision (g)(1)). Amendments also describe the types of legal actions for which funds may be raised (subdivision (g)(2)) and when legal defense funds may be raised (subdivision (g)(3)).

5. Disposition of Remaining Funds. Remaining funds in a legal defense account are currently disposed of under requirements in Government Code Section 89519(b)(1) through (b)(5). Staff thinks the Commission can and should confine candidates and officers to raising legal defense funds in amounts that reasonably relate to their expected legal costs. (See subdivision (g)(1)). New subdivision (h)(1) establishes that amount at up to \$5,000 above the actual legal costs incurred in a particular legal action. If the candidate or officer raises more than \$5,000 above the actual costs, the proposed amendments require the remaining funds to be returned on a pro rata basis to contributors. Otherwise the remaining funds may be distributed under Government Code Section 89519(b)(1) through (b)(5).

6. Termination and Reopening of Committees. Government Code Section 85304(c) requires the termination of a legal defense account “after all expenses associated with the dispute are discharged.” Proposed language in new subdivision (h) requires termination of a legal defense account within 90 days of the date all legal disputes for which the account is established are resolved. Proposed amendments also specify requirements for extension of the termination date or reopening of an account.

All other modifications to the regulation are intended to be technical or clarifying.